



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,178	12/28/2001	Jean-Michel Lerdu	Hamelin *3	7318

7590

02/18/2004

James D. Hall
Botkin & Hall, LLP
Suite 400
105 E. Jefferson Blvd.
South Bend, IN 46601

EXAMINER

SCHIFFMAN, JORI

ART UNIT

PAPER NUMBER

3679

DATE MAILED: 02/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/033,178	Applicant(s) LERDU, JEAN-MICHEL	
	Examiner Jori R. Schiffman	Art Unit 3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Appeal

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 6, 12, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Lauzier (US 3955799).

Regarding claims 1 and 12, Lauzier discloses a fence comprising an upper horizontal rail 11, a lower horizontal rail 2, boards 3 extending between rails, at least one of the rails having separate half parts (4, 10), each of the parts including a complimentary part of cooperating fastener (8, and the outside legs of 10) for securing parts together about the boards, at least one of the parts having longitudinally spaced ribs 5, each adjacent pair of ribs defining a space therebetween, and a board fitted into a space with the parts secured together about the boards.

As to claim 6, Lauzier discloses both rails (1, 2) having separate half parts (4, 10) and (4, 11), with at least one of the parts of each rail having longitudinally spaced ribs 5.

In regards to claim 13, Lazier discloses the complimentary parts of the fastener being capable of being slidingly engageable in one direction for mechanically preventing disengagement in the opposite direction.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lauzier (US 3955799) as applied to claim 1 above, and further in view of Taylor (US 4962914).

Regarding claim 2, Lauzier discloses the claimed fence except for both parts having longitudinally spaced ribs. Taylor teaches that it is well known for a fence to have boards 14 extend completely through the bottom rail 13. It would have been obvious at the time the invention was made to a person of ordinary skill in the art to extend the boards 3 of Lauzier completely through the bottom rail (4, 11) as disclosed in Taylor for increased support to the boards 3, and once the combination is made both opposing half parts of the rail would have longitudinally spaced ribs 5 to hold the board in place for greater stability of the fence.

As to claim 3, modified Lauzier discloses the claimed fence except for the fence having a first vertical post extending transversely relative to the rails, the rails engaging the first post. Taylor teaches a first post 10 extending transversely relative to rails 12 and

Art Unit: 3679

13. It would have been obvious at the time the invention was made to a person of ordinary skill in the art to include a first vertical post extending transversely to the rails in Lauzier as disclosed in Taylor so the fence is secured into the ground, which will increase the stability of the fence.

Referring to claim 4, modified Lauzier discloses a second vertical post 11 extending transversely relative to the rails.

6. Claims 5, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lauzier (US 3955799) in view of Taylor (US 4962914) as applied to claim 4 above, and further in view of Grimm et al. (US 4421302).

As to claims 5, 10, and 11, modified Lauzier disclosed the claimed fence except for the each fence post fitting between the opposing half parts of each of the rails and the lower rail carrying the posts and boards. Grimm teaches a fence with each post 14 fitting between opposing half parts 25, 26 and 35, 36 of rails 24 and 34, respectively. Grimm further discloses the lower rail 34 carrying the post 14 and boards 46. It would have been obvious at the time the invention was made to a person of ordinary skill in the art to construct the posts of modified Lauzier so that they fit between opposing half parts of the rails and so the lower rail carries the posts and boards as disclosed in Grimm for a professional finished appearance of the fence.

7. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lauzier (US 3955799) in view of Taylor (US 4962914) as applied to claims 1 and 4 above, and further in view of Weaver, III (US 4953830).

Art Unit: 3679

Regarding claim 7, modified Lauzier discloses the claimed fence except for a third horizontal rail located above the upper horizontal rail. Applicant is reminded that duplicating the components of a prior art device, as taught by Weaver, is a design consideration within the skill of the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). It would have been obvious at the time the invention was made to a person of ordinary skill in the art to include a third horizontal rail in the fence of modified Lauzier since it is well known in the art.

As to claims 8 and 9, since the third rail will be a duplication of the other two, modified Lauzier discloses the third rail having separate half parts, each of the parts having cooperating fasteners for securing the parts together, and at least one of the parts including longitudinally spaced ribs, each adjacent pair of ribs defining a space therebetween, a board fitted into the space.

8. Claims 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michael et al. (US 6231031) in view of Lauzier (US 3955799).

Regarding claims 14-17, Michael discloses a fence (Fig. 5) comprising an upper horizontal rail (upper 44, 46), a lower horizontal rail (lower 44, 46), and boards 22 extending between the rails, at least one of the rails divided into two vertically opposing half parts 44, 46. Michael fails to disclose each part including a complimentary portion of a fastener for securing the parts together about opposite sides of a board, and one of the parts including a plurality of longitudinally spaced, transverse ribs extending toward the other of the parts, the opposing parts and each adjacent pair of ribs defining a space therebetween into which a board is fitted when the parts are secured together. Using

fasteners to hold together parts of a fence is well known in the art of fencing. Lauzier teaches each of the parts (4, 10) of a horizontal rail 1 including a complimentary part of a cooperating fastener (8, and the outside legs of 10) for securing parts together about the boards, at least one of the parts having longitudinally spaced, transverse ribs 5, each adjacent pair of ribs defining a space therebetween, and a board fitted into a space with the parts secured together about the boards. It would have been obvious at the time the invention was made to a person of ordinary skill in the art to include a complimentary part of a cooperating fastener on each part of the rail, as well as at least one of the parts having longitudinally spaced, transverse ribs in Michael's rail as disclosed in Lauzier to create a more secure connection of the rail to the boards so they are less likely to come apart.

Response to Arguments

9. Applicant's arguments with respect to the claims have been considered but are moot in view of the new grounds of rejection.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited further to show the state of the art with respect to fences in general: U.S. Pat. No. 1376150 to Miller, U.S. Pat. No. 4014520 to Walters, and U.S. Pat. No. 3482819 to Leurent.

Art Unit: 3679

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jori R. Schiffman whose telephone number is 703-305-4805.

The examiner can normally be reached on M-Th, and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on 703-308-1159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jori R. Schiffman
Examiner
Art Unit 3679

JS


Lynne H. Browne
Supervisory Patent Examiner
Technology Center 3679